



LAC DUY & ASSOCIATES

**FROM 17/11/2022:
OFFICERS IN 11 FIELDS
ONLY ALLOWED TO
ESTABLISH OR MANAGE
ENTERPRISES AFTER
LEAVING THEIR POSITIONS
FOR 1-2 YEARS**

**LEGAL PROCEDURES
ENTERPRISES SHALL
PERFORM WHEN
APPLYING WORK
PERMIT FOR FOREIGN
EMPLOYEES**


**LIST OF LEGAL
DOCUMENTS REMOVED
FROM 11/15/2022 AND
UPDATED ONES IN 10/2022**


NEWSLETTER


10/2022


PUBLISHED BY LAC DUY & ASSOCIATES

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Dear Clients,

Lac Duy & Associates would like to send you the legal newsletter of October 2022 with some notable updates and articles as follows:

- Legal procedures enterprises shall perform when applying work permit for Foreign Employees
- From 17/11/2022: Officers in 11 fields only allowed to establish or manage enterprises after leaving their positions for 1-2 years
- List of documents removed from 15/11/2022 and legal documents in 10/2022





LEGAL PROCEDURES ENTERPRISES SHALL PERFORM WHEN APPLYING WORK PERMIT FOR FOREIGN EMPLOYEES

Different from labour relations where the employees are Vietnamese, in a labour relation with the employee is a foreigner, the employee is a special subject because in order to enter into labour contracts with foreign employees in Vietnam, enterprises and foreign employees are obliged to meet certain conditions as prescribed by Vietnamese law. Specifically, Clause 1, Article 151 of the Labour Code 2019 provides:

“Article 151. Requirements for foreigners to work in Vietnam

1. A foreign employee means a person who has a foreign nationality and:

a) is at least 18 years of age and has full legal capacity;

b) has qualifications, occupational skills, practical experience and adequate health as prescribed by the Minister of Health;

c) is not serving a sentence; does not have an unspent conviction; is not undergoing criminal prosecution under his/her home country's law or Vietnam's law;

d) has a work permit granted by a competent authority of Vietnam, except in the cases stipulated in Article 154 of this Labour Code.”

Pursuant to this provision, it can be seen that apart from the exceptions specified in Article 154 of the Labour Code 2019 such as *intra-enterprise*

within 11 service industries in Vietnam's service commitment schedule with the World Trade Organization, then most foreign employees entering Vietnam to work under labour contracts must have work permits issued by a competent Vietnamese state agency. Therefore, in order to be able to recruit foreign employees to work, Vietnamese enterprises need to perform the legal procedures related to the issuance of work permits to these foreign employees, specifically including 02 main steps as follows:

1. Step 1: Apply for Approval of Demand to Hire Foreign Employees

1.1. For businesses that are not contractors

- **At least 30 days before the expected date of employment of foreign employees**, the enterprise shall determine the need to employ a foreign employee for each job position that a Vietnamese employee is not qualified and report to the MOLISA or The People's Committee of the province or city where the foreign employee is expected to work is made according to Form No. 01/PLI, Appendix I, Decree 152/2020/ND-CP.

- In the course of implementation, if there is a change in demand for foreign employees, the enterprise must report to the Ministry of Labour, War Invalids and Social Affairs or the People's



Committee of the province according to Form No. 02/PLI Appendix I, Decree 152/2020/ND-CP **at least 30 days in advance from the expected date of employment of the foreign employees.**

- **Within 10 working days from the date of receipt of the explanation report or report on the change in demand for foreign employees,** the MOLISA or the People's Committee of the province shall issue a written approval or disapproval of the request for employment of foreign employees for each job position.

1.2. *For businesses that are contractors*

- Before recruiting foreign employees, the contractor is responsible for declaring the number, qualifications, professional capacity and experience of foreign employees to be recruited to execute the bidding package in Vietnam and request to recruit Vietnamese employees for the positions that are expected to recruit foreign employees with the President of the People's Committee of the province or city where the contractor implements the bidding package according to Form No. 04/PLI Appendix I, Decree 152/ 2020/ND-CP.

In case the contractor needs to adjust and supplement the declared number of employees, the investor must certify the plan for adjusting and supplementing the contractor's need for labour using Form No. 05/PLI Appendix I, Decree 152/2020/ND-CP.

- Within a maximum period of 02 months from the date of receipt of an application to recruit 500 Vietnamese employees or more and a maximum period of 01 month from the date of receipt of a request to recruit from 100 to less than 500 Vietnamese employees and 15 days from the date of receiving a request to recruit less than 100 Vietnamese employees but fail to introduce or supply Vietnamese employees to the contractor, the President of the provincial People's Committee shall consider and decide whether the contractor is allowed to recruit foreign employees to the positions that cannot recruit Vietnamese employees according to Form No. 06/PLI Appendix I, Decree 152/2020/ND-CP.

2. **Step 2: Submit Application for Work Permit for Foreign Employees**

Article 9 of Decree 152/2020/ND-CP stipulates that an application file for a work permit for foreign employees includes:

- An application form for issuance of a work permit No. 11/PLI Appendix I Decree 152/2020/ND-CP.
- A fitness to work certificate issued by a foreign or Vietnamese competent health facility issued within 12 months.
- A police (clearance) certificate or a document certifying that the foreign employee is not serving a sentence, has a criminal record expunged or is not facing a criminal prosecution



which is issued by a foreign or Vietnamese authority.

- Documents and papers proving that they are managers, executives, experts, technical employees and documents as prescribed for some jobs, industries and occupations with special requirements (football players, pilots, aircraft maintenance, crew members, etc.)
- 02 color photos (4cm x 6cm size, white background, front view, bare head, no color glasses), taken within 6 months before the submission date of application.
- An acceptance of demand for foreign employees, unless it is not required.
- A valid certified true copy of passport as per the law.
- Documents related to foreign employees for each specific case as prescribed by law.

3. Notes That Enterprises Need to Know When Applying for Work Permits for Foreign Employees

3.1. The maximum term of a work permit is **02 years**, in case of extension, it can only be extended once with a maximum term of **02 years**¹. After the foreign employee is granted an extension of the work permit, the enterprise and the foreign employee must sign a written labour contract in accordance with Vietnamese labour law before the expected date of continuing to work for the enterprise.

3.2. The term of the labour contract for a foreign employee working in Vietnam must not exceed the term of the work permit. When employing foreign employees to work in Vietnam, the two parties may agree to enter into multiple definite-term labour contracts²

¹ Article 155 of Labour Code 2019

² Clause 2 Article 151 of Labour Code 2019

LEGAL PROCEDURES ENTERPRISES SHALL PERFORM WHEN APPLYING WORK PERMIT FOR FOREIGN EMPLOYEES

Step 1: Apply for Approval of Demand to Hire Foreign Employees

For businesses that are contractors

- Within a maximum period of 02 months from the date of receipt of an application to recruit 500 Vietnamese employees or more
- 01 month from the date of receipt of a request to recruit from 100 to less than 500 Vietnamese employees
- 15 days from the date of receiving a request to recruit less than 100 Vietnamese employees

For businesses that are not contractors

- At least 30 days before the expected date of employment of foreign employees, report to the MOLISA or The People's Committee of the province or city or if there is a change in demand for foreign employees, the enterprise must report to the Ministry of Labour, War Invalids and Social Affairs or the People's Committee of the province
- Within 10 working days from the date of receipt of the explanation report or report on the change in demand for foreign employees, receive a written approval or disapproval of the request for employment of foreign employees for each job position

Step 2: Submit Application for Work Permit for Foreign Employees

Article 9 of Decree 152/2020/ND-CP stipulates that an application file for a work permit for foreign employees includes:

- An application form for issuance of a work permit
- A fitness to work certificate issued by a foreign or Vietnamese competent health facility issued within 12 months.
- A police (clearance) certificate or a document certifying that the foreign employee is not serving a sentence, has a criminal record expunged or is not facing a criminal prosecution which is issued by a foreign or Vietnamese authority.
- Documents and papers proving that they are managers, executives, experts, technical employees and documents as prescribed for some jobs, industries and occupations with special requirements (football players, pilots, aircraft maintenance, crew members, etc.).
- 02 color photos (4cm x 6cm size, white background, front view, bare head, no color glasses), taken within 6 months before the submission date of application.
- An acceptance of demand for foreign employees, unless it is not required.
- A valid certified true copy of passport as per the law.
- Documents related to foreign employees for each specific case as prescribed by law.

Note:

- The maximum term of a work permit is 02 years
- In case of extension, it can only be extended once with a maximum term of 02 years
- Term of a re-issued work permit: The term of a re-issued work permit is equal to the duration of the issued work permit minus the time the foreign worker has worked up to the time of application for re-issuance of the work permit.



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OFFICERS IN 11 FIELDS
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The Ministry of Finance has just issued Circular No. 60/2022/TT-BTC dated 30/10/2022 ("Circular 60/2022") stipulating the list of sectors and periods over which officers who hold certain positions and powers are not allowed to establish or hold managerial titles or positions in private enterprises, limited liability companies, joint-stock companies, partnerships and cooperatives in the sectors that such persons are responsible for management after being discharged from holding their positions in the sectors under management of the Ministry of Finance.

Specifically, persons with certain positions and powers who have time to work in the following 11 sectors after being discharged from holding their positions are not allowed to establish or hold managerial titles or positions in enterprises or cooperatives within the prescribed time limits, including:

- State management of accounting and auditing;
- State management of securities and securities market;
- State management of insurance;
- State management of customs;
- State management of prices;
- State management of taxes, fees, charges and other state budget revenues;
- State management of cooperate finance and management of state capital in enterprises;
- State management of national reserves;
- Management of domestic and foreign debts of the Government, public debt, foreign debt of the country and international aid sources for Vietnam and sources of loans and aid of Vietnam to foreign countries;



- State management of the state budget;
- State management of public property.

Circular 60/2022 also stipulates that in the above first 09 cases, the time limit is **24 months** from the date on which the persons have been discharged from holding their positions under the decisions of the competent authorities. As for the remaining 02 cases, the period is shorter, which is **12 months**.



**LIST OF DOCUMENTS REMOVED FROM 15/11/2022**

| NO. | NAME |
|------------|-------------|
|------------|-------------|

LABOUR – SALARY

| | |
|----|--|
| 1. | Circular No. 28/2005/TT-BLDTBXH guiding the salary regime and salary allowances for workers, employees, and construction officials of 05 Hydropower projects |
| 2. | Circular No. 12/2007/TT-BLDTBXH guiding the salary regime and salary allowances for workers, employees, and construction officials of hydropower projects |
| 3. | Circular No. 37/2009/TT-LDTBXH guiding the mid-shift diet for construction workers and employees of Son La hydropower project |
| 4. | Circular No. 03/2011/TT-BLDTBXH guiding the salary regime and salary allowances for construction workers and employees of Lai Chau and Dong Nai hydropower projects |
| 5. | Circular No. 17/2015/TT-BLDTBXH guiding the development of the salary scale, salary allowances, and salary transfer for employees in the State-owned limited company |

EMPLOYMENT

| | |
|----|---|
| 1. | Circular No. 23/2014/TT-BLDTBXH guiding several articles of No.Decree 03/2014/ND-CP |
| 2. | Circular No. 07/2015/TT-BLDTBXH detailing the implementation of Decree No. 196/2013/ND-CP |
| 3. | Circular No. 16/2015/TT-BLDTBXH of the Ministry of Labour, War Invalids and Social Affairs guiding several articles of Decree No. 75/2014/ND-CP |
| 4. | Circular No. 40/2016/TT-BLDTBXH guiding several articles of Decree No. 11/2016/ND-CP |
| 5. | Circular No. 44/2016/TT-BLDTBXH guiding policies on vocational training and employment for who have completed their imprisonment sentences |



SOCIAL INSURANCE

1. Circular No. 58/2015/TT-BLDTBXH stipulating the adjustment rate of salaries and monthly incomes for which the social insurance premium has been paid
2. Circular No. 23/2016/TT-BLDTBXH guiding the adjustment of pensions, social insurance allowances and monthly allowances according to the Decree No. 55/2016/ND-CP
3. Circular No. 42/2016/TT-BLDTBXH on indexing factor in calculation of average monthly income for which social insurance has been paid
4. Circular No. 18/2017/TT-BLDTBXH guiding adjustments in pensions, social insurance benefits and monthly benefits prescribed in Clauses 1, 2, 3 and 8 Article 1 of Decree No.76/2017/ND-CP
5. Circular No. 32/2017/TT-BLDTBXH on indexing factors in calculation of average monthly salary and earnings for which social insurance has been paid
6. Circular No. 35/2018/TT-BLDTBXH prescribing indexation rate of monthly salary and income after payment of social insurance contributions

**LEGAL DOCUMENTS 10/2022**

| NO. | EFFECTIVE DATE | NAME |
|------------------------|-----------------------|--|
| ENTERPRISE | | |
| 1. | 01/10/2022 | Circular No. 52/2022/TT-BTC providing guidelines for Decree No.45/2021/ND-CP on establishment, organization and operation of Cooperative Development Assistance Funds issued by Minister of Finance |
| 2. | 31/10/2022 | Circular No. 57/2022/TT-BTC guiding Decree No.148/2021/ND-CP on management and use of revenues generated by transfer of ownership of enterprises and public service providers, revenues generated by transfer of state capital and equity amount that exceeds charter capital of enterprises issued by Minister of Finance |
| COMMERCIAL | | |
| 1. | 18/10/2022 | Circular No. 13/2022/TT-BCT abolishing Clause 6, Article 7 of Circular 05/2021/TT-BCT guiding the contents of electrical safety issued by the Minister of Industry and Trade |
| 2. | 30/10/2022 | Decree No. 69/2022/ND-CP amending Decrees regulating business activities in the maritime field |
| INSURANCE | | |
| 1. | 01/10/2022 | Circular No. 50/2022/TT-BTC guiding Decree No. 119/2015/ND-CP on compulsory insurance for construction investment activities and Decree No. 20/2022/ND-CP amending Decree No. 119/2015/ND-CP on compulsory insurance for construction investment activities issued by Minister of Finance |
| LABOUR – SALARY | | |
| 1. | 06/10/2022 | Circular No. 08/2022/TT-BNNPTNT stipulating codes, professional standards, and salary classification for civil servants in the agriculture and rural development sector issued by the Minister of Agriculture and Rural Development |



| | | |
|----|------------|---|
| 2. | 10/10/2022 | Circular No. 13/2022/TT-BTTTT stipulating codes, standards for professional titles, and salary ratings for editors, reporters, translators, and television directors in the information and communication industry issued by the Minister of Information and Communications |
| 3. | 15/10/2022 | Circular No. 14/2022/TT-BLDTBXH on career counseling, employment and support for students to start up in vocational education issued by the Minister of Labour - Invalids and Social Affairs |
| 4. | 21/10/2022 | Circular No. 16 /2022/TT-BLDTBXH on promulgating the training program for the profession of national occupational skill assessment issued by the Minister of Labour - Invalids and Social Affairs |

INVESTMENT

| | | |
|----|------------|--|
| 1. | 01/10/2022 | Circular No. 19/2022/TT-BKHDT stipulating the statistical reporting regime of the Planning, Investment and Statistics sector issued by the Minister of Planning and Investment |
| 2. | 01/10/2022 | Circular No. 09/2022/TT-BGTVT providing guidance on bid evaluation methods and criteria for selection of investors executing public-private partnership projects and template of build-operate-transfer contract in transport sector issued by the Minister of Transport |